

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2416

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Motor Vehicle Reg. Records/Public Records

DATE: April 8, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u> </u>	<u> </u>	<u>JU</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The committee substitute makes confidential and exempt a motor vehicle dealer name or identification number contained in, or indexed by, motor vehicle title history or registration databases received by any agency that regularly receives or collects this information. The CS provides exceptions for such information to be released.

This CS provides any person attempting to access this information must present legitimate credentials or identification to demonstrate his or her qualifications. Also, this CS provides any employee in possession of information made confidential by this section who knowingly discusses such confidential information to a person not entitled to access the information, or any person, knowing he or she is not entitled to obtain information made confidential by this section, who obtains or attempts to obtains such information commits a felony of the third degree, punishable as provided in ss. 775.082, 775.082, and 775.084, F.S. (term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000).

This CS creates section 319.42 of the Florida Statutes.

II. Present Situation:

Motor Vehicle Dealers

Section 320.27(1)(c), F.S., defines the term “motor vehicle dealer” to mean any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to

an agreement as defined in s. 320.60(1), F.S.¹ No person may engage in business as, serve in the capacity of, or act as a motor vehicle dealer in this state without first obtaining a license from the Department of Highway Safety and Motor Vehicles (DHSMV). [s. 320.27(2), F.S.]

Section 320.27 (9), F.S., provides DHSMV may deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed, any of the following activities:

1. Commission of fraud or willful misrepresentation in application for or in obtaining a license.
2. Conviction of a felony.
3. Failure to honor a bank draft or check given to a motor vehicle dealer for the purchase of a motor vehicle by another motor vehicle dealer within 10 days after notification the bank draft or check has been dishonored.

The section further provides DHSMV may deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed, with sufficient frequency so as to establish a pattern of wrongdoing on the part of a licensee, violations of one or more of the following activities:

1. Representation that a demonstrator is a new motor vehicle, or the attempt to sell or the sale of a demonstrator as a new motor vehicle without written notice to the purchaser that the vehicle is a demonstrator.²
2. Unjustifiable refusal to comply with a licensee's responsibility under the terms of the new motor vehicle warranty issued by its respective manufacturer, distributor, or importer, unless such refusal is at the direction of the manufacturer, distributor, or importer.
3. Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles.
4. Failure by any motor vehicle dealer to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of the motor vehicle purchased by the customer or purchaser.

¹ Section 320.60(1), F.S., defines the term "agreement" to mean a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.

² Section 320.60(3), F.S., defines the term "demonstrator" to mean any new motor vehicle which is carried on the records of the dealer as a demonstrator and is used by, being inspected, or driven by the dealer or his or her employees or prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

5. Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle.
6. Failure to apply for transfer of a title as prescribed in s. 319.23(6), F.S.
7. Use of the dealer license identification number by any person other than the licensed dealer or his or her designee.
8. Failure to continually meet the requirements of the licensure law.
9. Representation to a customer or any advertisement to the public representing or suggesting that a motor vehicle is a new motor vehicle if such vehicle lawfully cannot be titled in the name of the customer or other member of the public by the seller using a manufacturer's statement of origin as permitted in s. 319.23(1),F.S.
10. Requirement by any motor vehicle dealer that a customer or purchaser accept equipment on his or her motor vehicle which was not ordered by the customer or purchaser.
11. Requirement by any motor vehicle dealer that any customer or purchaser finance a motor vehicle with a specific financial institution or company.
12. Requirement by any motor vehicle dealer that the purchaser of a motor vehicle contract with the dealer for physical damage insurance.
13. Perpetration of a fraud upon any person as a result of dealing in motor vehicles, including, without limitation, the misrepresentation to any person by the licensee of the licensee's relationship to any manufacturer, importer, or distributor.
14. Violation of any of the provisions of s. 319.35, F.S., (odometer tampering) by any motor vehicle dealer.
15. Sale by a motor vehicle dealer of a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer, unless the customer provides written authorization for the sale of the trade-in vehicle prior to delivery of the newly acquired vehicle.
16. Willful failure to comply with any administrative rule adopted by DHSMV.
17. Violation of chapter 319, F.S., this chapter, or ss. 559.901-559.9221, F.S., which has to do with dealing in or repairing motor vehicles or mobile homes. Additionally, in the case of used motor vehicles, the willful violation of the federal law and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer sales window form.

When a motor vehicle dealer is convicted of a crime which results in his or her being prohibited from continuing in that capacity, the dealer may not continue in any capacity within the industry. The offender may have no financial interest, management, sales, or other role in the operation of

a dealership. Further, the offender may not derive income from the dealership beyond reasonable compensation for the sale of his or her ownership interest in the business.

Section 320.27(12), F.S., provides that DHSMV may levy and collect a civil fine, in an amount not to exceed \$1,000 for each violation, against any licensee if it finds that the licensee has violated any provision of this section or has violated any other law of this state or the federal law and administrative rule set forth in s. 320.27(9)(a), F.S., related to dealing in motor vehicles.

Public Records Law

Article I, s. 24(a), of the Florida Constitution, expresses Florida's public policy regarding access to government records in providing:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from open government requirements. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Section 119.07(1)(a), F.S., provides every person who has custody of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," provides an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this

subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

III. Effect of Proposed Changes:

Section 1 of the bill makes confidential and exempt a motor vehicle dealer name or identification number contained in, or indexed by, motor vehicle title history or registration databases received by any agency that regularly receives or collects this information.

The CS provides for exceptions to this exemption. The information can be released:

- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.
- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
- To newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S., and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of new.
- For use in research activities and for use in producing statistical reports.
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

- To any state of federal agency that is authorized to have access to such information by any provision of law will be granted such access in the furtherance of the agency's statutory duties.

This CS provides any person attempting to access this information must present legitimate credentials or identification to demonstrate his or her qualifications. The CS further provides the motor vehicle dealer name and identification number may be made available to a specific person or entity not otherwise entitled with the express written consent of the applicable motor vehicle dealer.

Also, this CS provides any employee in possession of information made confidential by this section who knowingly discusses such confidential information to a person not entitled to access the information, or any person, knowing he or she is not entitled to obtain information made confidential by this section, who obtains or attempts to obtains such information commits a felony of the third degree, punishable as provided in ss. 775.082, 775.082, and 775.084, F.S. (term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000).

This CS makes this exemption subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.

Section 2 of the CS provides a public necessity statement, as required by Art. I, s. 24 of the State Constitution, which states it is necessary to protect motor vehicle dealer identification information contained in motor vehicle records because such information is of a sensitive business nature. Disclosure of such information would allow confidential business customer lists to be available for inappropriate uses to the detriment of the licensed motor vehicle dealer whose information is revealed.

Section 3 of the CS provides that this act takes effect on becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This CS creates a public records exemption for a motor vehicle dealer name or identification number contained in, or indexed by, motor vehicle title history or registration databases received by any agency that regularly receives or collects this information. Exceptions to the exemption are provided. As the CS creates an exemption to public records requirements, it must contain a statement of public necessity, as well as pass each house of the Legislature with a two-thirds vote.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
